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C O N F I D E N T I A L SECTION 01 OF 04 TAIPEI 000570

SIPDIS

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TAGS: [PREL](#) [KCRIM](#) [KJUS](#) [PGOV](#) [CH](#) [TW](#)
SUBJECT: TAIWAN HOPES CROSS-STRAIT LEGAL COOPERATION
AGREEMENT WILL LEAD TO RETURN OF FINANCIAL FUGITIVES

REF: A. TAIPEI 480
[1](#)B. OSC CPP20090426072004

Classified By: Director Stephen M. Young,
For Reasons 1.4(B) and (D).

[1](#)1. (C) Summary: The Cross-Strait Joint Crime-Fighting and Mutual Legal Assistance Agreement (cross-Strait MLAA) signed in Nanjing on April 26 (See ref B for text of agreement), is intended to expand and regularize the judicial cooperation already enjoyed on a case-by-case basis under the 1990 Kinmen Accord. A key priority for Taiwan is establishing a mechanism for the return of Taiwan's criminal fugitives from the mainland, particularly those charged with white-collar economic crimes. Officials have expressed hope Taiwan will be able to negotiate similar agreements with Japan and the EU and an extradition agreement with the U.S. End Summary.

In Pursuit of Economic Criminal Fugitives

[1](#)2. (C) Mainland Affairs Council (MAC) Chair Lai Shin-yuan underlined the broad domestic consensus in Taiwan for cross-Strait joint crime-fighting efforts, particularly the return of economic criminals, in her press conference following the third round of cross-Strait talks between the Straits Exchange Foundation (SEF) and China's Association for Relations Across the Taiwan Strait (ARATS). MAC public survey results announced on April 23, just three days before the signing of the agreements in Nanjing, indicated 79.6 percent of respondents supported an agreement on joint cross-strait crime prevention, and survey results announced by the opposition Democratic Progressive Party (DPP) on April 25 indicated that 88.4 percent of respondents supported including provisions for the repatriation of economic criminals within a cross-Strait joint crime fighting agreement.

[1](#)3. (C) The Ministry of Justice (MOJ) took out a half-page newspaper ad outlining the five areas of cooperation in the cross-Strait MLAA, and featuring a cartoon figure lounging under two palm trees, with "The Other Side of the Strait is no longer a heaven for criminals," written beneath. According to the MOJ's Investigation Bureau (MJIB), at least 84 Taiwan fugitives are currently hiding out in China, most of whom are white-collar criminals convicted of economic-related crimes. One prominent example, former

Legislative Yuan Speaker Liu Sung-pan, was convicted in 2004 of breach of trust for accepting a NTD 150 million bribe in return for help brokering a NTD 1.5 billion loan to the Kuangsan Group. SEF Legal Services Director Ho Wu-liang said Taiwan is already drawing up a list of fugitives to submit to the mainland for help in repatriation to Taiwan.

Taiwan Hopes for U.S.-Taiwan Extradition Agreement

14. (C) According to Taiwan data, there are currently 137 Taiwan criminal fugitives in the U.S., and President Ma Ying-jeou has repeatedly expressed his hope to negotiate an extradition agreement with the U.S. Officials at MOJ, the Judicial Yuan (JY) and MAC have made clear their hope that the new cross-Straits MLAA will encourage the U.S. and others to begin negotiations on similar agreements with Taiwan. Media commentators and others have pointed to the similarity between the new cross-Straits agreement and the 2002 U.S.-Taiwan MLAA, but with provisions added for joint crime-fighting and the return of fugitives. According to National Chengchi University (NCCU) Law Professor Bruce Liao, the Ma administration probably hopes the agreement with Beijing will help assuage concerns the U.S. or others may have about PRC objections to their own extradition agreements with Taiwan. MAC Legal Affairs Department officials asked AIT whether cross-Straits agreements would make it easier for the U.S. to negotiate extradition and other agreements with Taiwan.

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Practical Cooperation and Good-will Gesture

15. (C) Speaking shortly before the talks in Nanjing, MAC Chair Lai Shin-yuan told AIT that discussions on anti-crime cooperation had gone more smoothly than expected and that the resulting agreement would give Taiwan and the PRC greater scope to repatriate financial criminals and cooperate in criminal investigations (ref A). MOJ and JY officials believe Beijing concluded the agreement not only to establish a regularized mechanism for judicial assistance, but also as an expression of China's good will toward Taiwan under the Ma administration. Prof. Liao suggested that Beijing at this point is looking for ways to convince the Taiwan public that closer ties with the mainland will serve their interests. An MLAA that provided for the return of financial fugitives would enjoy broad-based public support in Taiwan and is practical enough in nature not to raise significant sovereignty issues, he observed.

Will China Repatriate Taiwan's Economic Fugitives?

16. (C) Liao suggested the new agreement will lead PRC central government officials to press local governments to comply with repatriation requests. Previously, said Liao, PRC local officials were the main stumbling block to securing the return of financial fugitives. Now, Beijing must prove its sincerity by sending back fugitives or else risk undermining cross-Straits detente. According to other sources, there could be several test cases already in the pipeline. One case involves a Taiwan financial fugitive in Shanghai, who is currently applying for a U.S. visa. Already, Taiwan police are working with Shanghai authorities to apprehend the subject and prevent the flight of another Taiwan financial fugitive to the United States.

17. (C) MAC Legal Affairs Department Director Wu Mei-hung, a member of the SEF delegation in Nanjing, noted that mainland officials cited Chen You-hao as an example of how dual nationality could complicate efforts to repatriate certain high-profile fugitives. According to Wu, PRC officials claimed Chen You-hao's "U.S. citizenship" (Note: Our understanding is that Chen You-hao only has a pending LPR

application with USCIS. End note.) could cause the U.S. to protest his return by China to Taiwan. Moreover, Wu said, Chinese officials pointed out that some high-profile economic fugitives have large enterprises on the mainland that employ many people. Therefore, the potential economic impact of a factory-owner's forced return to Taiwan could give local officials pause. In the end, both sides agreed that dealing with corruption, embezzlement, and other crimes is a larger concern, though Beijing's view seems to be that legal cooperation will expand gradually as cross-strait links increase over time.

Provisions of Mutual Legal Assistance Agreement

18. (SBU) The cross-strait MLAA provides for cooperation in "joint crime fighting," the exchange and delivery of judicial documents, investigation and collection of evidence, recognition and enforcement of civil judgments and arbitration awards, and the apprehension and return of convicted criminals and criminal suspects. The agreement also permits the repatriation of Taiwan nationals serving sentences on the mainland (and vice versa), provided officials from both sides and the subject agree to the transfer. Cross-strait crime prevention efforts will focus on major crimes such as manslaughter, kidnapping, human trafficking, cross-border organized crime, etc; economic crimes such as embezzlement, fraud, money-laundering, etc; crimes involving corruption; crimes involving terrorist activities; and other criminal acts. MAC Legal Affairs Director Wu noted that mainland officials preferred a court-to-court implementing mechanism, similar to their arrangement with Hong Kong. Taiwan, however, could not agree

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to an arrangement modeled on a mainland-Hong Kong precedent, said Wu, a point understood by the Chinese officials. Therefore, MOJ will serve as Taiwan's implementing authority for the agreement. While Beijing has not yet identified its corresponding implementing authority, Taiwan's MOJ will coordinate with those mainland agencies involved in the judicial process, specifically the Public Security Bureau, the Supreme People's Court, the Supreme People's Procuratorate, and the Ministry of Justice.

19. (C) Following the Kinmen Accord precedent, DG Liu noted, the new agreement uses the term "repatriation" rather than "extradition" in order to avoid the sensitive sovereignty issue. The new agreement does not permit the extradition of Taiwan nationals to China, which is prohibited by Taiwan's Extradition Law unless otherwise provided, said Director Chen. Taiwan officials told their mainland counterparts that this prohibition would even extend to people from the mainland who later became Taiwan passport-holders, e.g. mainland spouses of Taiwan nationals, said MAC Legal Affairs Director Wu. Mainland officials accepted Taiwan's position but did not raise concerns about transferring PRC criminals to Taiwan, Wu added, since Beijing views Taiwan as part of China. In addition, Article 6 of the agreement states that should the party which receives a repatriation request have important concerns or interests, these concerns or interests must be considered (See ref B for full text of the agreement). Wu clarified that both sides explicitly agreed that Article 6 would preclude the repatriation of political, military, and religious fugitives/dissidents. SEF Legal Service Department Director, Ho Wu-liang, also a member of the Taiwan delegation at the talks, added that the PRC indicated it would include concerns about the economic impact on employment when deciding whether to grant repatriation requests.

110. (SBU) The Executive Yuan (EY) approved the cross-strait MLAA and several other agreements on April 30 and these agreements were submitted to the LY last week. The cross-strait MLAA should take effect by June 25, 60 days after its signing.

Cross-Strait MLAA Expands on Kinmen Accord

¶11. (C) According to both MOJ and the JY, the MLAA expands on the Kinmen Accord, but does not supplant it. The new agreement does not cover illegal immigrants, who will still be repatriated under the Kinmen Accord. The new MLAA systematizes cross-Strait cooperation and provides practical guidelines for working level implementation of a variety of issues from the recognition and exchange of official documents to returning assets acquired or used in criminal offenses. It also increases the venues available for returning and receiving criminal fugitives beyond Matsu/Mawei and Kinmen/Xiamen to include all direct air and sea links. Following the signing of the new agreement, China has already repatriated one fugitive to Taiwan via Macau.

Comment

¶12. (C) Domestic support for the new agreement is high, based on the expectation that Taiwan will finally be able to bring to justice some high-profile economic fugitives who have been living on the mainland. That some of these individuals have large investments in China could be a complicating factor. After Taiwan submits requests for well-known fugitives, the public and media here will be watching closely to see whether Beijing will actually follow through by returning them to Taiwan. At the same time, Taiwan authorities are clearly sensitive to the issue of political dissidents being repatriated to the mainland, and have incorporated measures to prevent such cases. Taiwan is hopeful that the new cross-Strait agreement will be a positive step helping its quest to sign an extradition agreement with the U.S., where even more Taiwan fugitives

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have sought refuge in recent years.
YOUNG